



DATE: February 13, 1998

CASE NO. 96-INA-371

*In the Matter of:*

**LISA & TERRANCE BEGLANE,**  
Employer,

*on behalf of*

**MARIO ERNESTO BEGLANE,**  
Alien.

Appearance: Janet A. Savrin, Esq.  
for Employer and Alien

Before: Burke, Lawson and Vittone  
Administrative Law Judges

### **DECISION AND ORDER**

***Per Curiam*** This case arises from the Employer's request for review of the denial by a U.S. Department of Labor Certifying Officer ("CO") of an application for alien labor certification. The certification of aliens for permanent employment is governed by section 212(a)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A), and Title 20, Part 656 of the Code of Federal Regulations ("C.F.R."). Unless otherwise noted, all regulations cited in this decision are in Title 20.

This decision is based on the record upon which the CO denied certification and the Employer's request for review, as contained in the appeal file and any written arguments. 20 C.F.R. § 656.27 (c).

### **STATEMENT OF THE CASE**

This case concerns an application (ETA 750A) for the permanent employment of the Alien as a Live-in Household Cook with the following duties:

Plan menu and cook meals. Peel, wash, trim, prepare vegetables and meats and fish for cooking. Cook vegetables, bake, cook meat and fish, as required. Clean kitchen and cooking utensils. Prepare menu from own or established recipes. Do necessary shopping for all items.

(AF 35-36).

The Employers specified in the ETA 750A that any U.S. applicant for the position must have two years experience in the job offered or two years of experience in the related occupation of "Cook."

The ETA 750A was accompanied by a statement of the Alien's qualifications (ETA 750B) which noted that he had worked as a "Cook" at Casey's Restaurant from September 1989 to May 1993 and at The Seaport Restaurant Bar & Grill since June 1993 (AF 12-13). In each position he had the following duties:

Prepared, seasoned and cooked soups, meats, vegetables, desserts and other foods as per orders. Adjust thermostats for oven broilers, grills, roasters, kettles, etc. Measured and mixed ingredients according to recipes, using variety of kitchen utensils and equipment such as blenders, grinders and slicers. Baked, roasted and broiled meats. Observed and tasted food as they cook and carved meats, positioned food on serving plates, etc.

Upon receipt of the application the agency responsible for its initial processing, i.e., the New York Department of Labor (NYDOL) informed Employer and its counsel of certain corrective actions which needed to be taken within 45 days in regard to the application (AF 6-8). This included the information that as the job is for a household domestic service worker, they must submit the following:

Documentation of the alien's paid experience in the form of statements from past or present employers setting forth the dates (month and year) employment started and ended, hours of work per day, number of days worked per week, place where the alien worked, detailed statement of duties performed on the job, equipment and appliances used, and the amount of wages paid per week of month.

They were informed further that the total experience must be equal to one full year.

The Employers did not submit documentation of the Alien's experience within the 45 days allotted for their reply. Accordingly, the application was canceled by the NYDOL because of such failure and the Employers were informed that they would need to file a new application (AF 14-16). The Employer's subsequent re-filed application was not accompanied by any documentation of the Alien's past experience. After being informed twice more of the need for such documentation, the Employers submitted a statement from Casey's American Café to the effect that the Alien had been employed by the restaurant as a Cook from September 1989 until May 1993 and that his duties included those listed by the Alien on the ETA 750B.

Following receipt of the case from the NYDOL, the CO issued a Notice of Findings

(NOF) in which she proposed to deny certification for reasons which included the following:

For live-in domestic occupations, Section 656.21(a) requires documentation of the alien's paid experience in the form of statements from past or present (**not sponsoring**) employers setting forth the dates employment started and ended, place where the alien worked, a detailed statement of the duties performed on the job, and the wages paid for such duties.

It appears the alien did not have one year prior paid experience as a domestic cook. You must submit evidence in the form of a statement of one year of paid experience **in the job duties** prior to the alien's current employment with the sponsoring employer. The alien's **documentation must show at least one year's experience in the tasks to be performed on the job (domestic cook)**, and the wages paid for such duties.

This requirement in no way relates to whether or not the alien qualifies for the job opportunity.

(AF 60-64).

The Employers did not submit any new documentation of the Alien's past experience with their rebuttal. In a letter from their counsel which accompanied the same, he contended that §656.21(a)(3) does not apply because the skilled position of a Cook is not the type of "domestic service work job" contemplated by the regulation and, in any event the Alien's experience as a restaurant cook, which is very similar to those of a domestic cook, meets the Employer's alternate experience.

The CO issued a Final Determination denying the application on the ground, *inter alia*, that the Employer had failed to document that the Alien had at least one year's experience as a domestic cook. The Employer then requested a review of the denial and the record upon which the denial was based has been submitted to the Board for such purpose.

## DISCUSSION

Section 656.21(a)(3)(iii)(A) of the regulations provides that if the application involves a job offer as a "live-in household domestic service worker" it must include the following:

Documentation of the alien's paid experience in the form of statements from past or present employers setting forth the dates (month and year) employment started and ended, hours of work per day, number of days worked per week, place where the alien worked, detailed statement of duties performed on the job, equipment and appliances used, and the amount of wages paid per week of month. The total paid experience must be equal to one full year's employment on a full-time basis. For

example, two year's experience working half-days is the equivalent of one full year's experience. Time spent in a household domestic service training course cannot be included in the required one year of paid experience.

As defined in §656.11(b)(26):

Household Domestic Service Workers” perform a variety of tasks in private households, such as cleaning, dusting, washing, ironing, making beds, maintaining clothes, **marketing, cooking, serving food**, and caring for children or disabled persons . . .

**(emphasis added).**

The Board has held that §656.12(a)(3)(iii) requires that the employer document one year of paid experience in the job offered. *Niki Golod*, 93-INA-354 (July 26, 1994). Failure to do so requires that the application be denied. *Ofelia Balmaseda*, 94-INA-411 (Oct. 12, 1995).

Employer's counsel contends that §656.21(a)(3)(iii) does not apply to this position (Household Cook) because it is a skilled positions. This argument has no merit. As noted above, §656.21(a)(3)(iii) requires the submission of additional documentation where the job offered is for a “live-in household domestic worker.” The job offered herein is Cook, Household, live-in -- occupational code 305.281-010. The category in the DOT is “Service Occupations,” and the division is “Domestic Service Occupations.” The application is clearly for a live-in worker to perform tasks in and around a private household. Whether the position is “skilled” or “unskilled” is immaterial for the purposes of §656.21(a)(3)(iii). Thus, the additional documentation is required.

Documentation of the Alien's experience as a cook in a restaurant does not satisfy the requirements of the regulation in issue. The Alien's experience in such occupation was concerned with the preparation of food. It is not shown to include such duties of a household cook as planning menus, shopping for foodstuffs, serving meals and cleaning the kitchen. Consequently, the Employer has failed to document that the Alien has had experience of at least one year in the job offered.<sup>1</sup>

As the application must be denied on the above basis, the Board deems it unnecessary to discuss the CO's other reasons for not granting certification.

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<sup>1</sup>Subsequent to the submission of the case to the Board, the Employer has submitted documentation purporting to show that the Alien had the requisite experience. Such evidence can not now be considered as the Board's decision must be based on the evidence of record at the time of the Final Determination. *See, e.g., Cappriccio's Restaurant*, 90-INA-480 (Jan. 7, 1992).

**ORDER**

The Certifying Officer's denial of labor certification is hereby AFFIRMED.

Entered at the direction of the panel:

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Todd R. Smyth  
Secretary to the Board of  
Alien Labor Certification Appeals

**NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW:** This Decision and Order will become the final decision of the Secretary unless within 20 days from the date of service, a party petitions for review by the full board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity in its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

**Chief Docket Clerk  
Office of Administrative Law Judges  
Board of Alien Labor Certification Appeals  
800 K Street, N.W., Suite 400  
Washington, DC 20001-8002**

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for full Board review with supporting authority, if any, and shall not exceed five double-spaced typewritten pages. Responses, if any, shall be filed within 10 days of the service of the petition, and shall not exceed five double-spaced typewritten pages. Upon the granting of the petition the Board may order briefs.